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November 12, 1996

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: *Ex Parte* - CC Docket No. 96-115 - CPNI

Dear Mr. Caton:

Along with representatives from several Bell Operating Companies, I met with Richard Metzger and members of the Policy and Program Planning Division on August 21, 1996 to discuss CPNI issues. At that meeting, several questions were raised. This letter responds to those questions and describes two additional issues which need to be considered relating to subscriber listing information. The following points will be addressed:

(1) Commission rules should be flexible to allow companies to take advantage of changes in the marketplace and in technology.

(2) Triggers are available for customers to opt out of allowing disclosure of Customer Proprietary Network Information (CPNI).

(3) The Commission has the authority to approve a notice and opt out approach for approval of use of CPNI.

(4) Congress drafted more all encompassing rules to replace the existing CPNI rules.

(5) The Commission should clarify two issues regarding release of subscriber listing information.

(1) Commission rules should be flexible to allow companies to take advantage of changes in the marketplace and in technology.

In its Comments and Reply Comments, GTE encouraged the Commission to interpret the term "telecommunications service" broadly, i.e., that all telecommunications services fall within one category for purposes of Section 222. Customers do not usually recognize the differences between one branch of a company and another, and are more confused if the corporation tries to approach them on a segmented basis. For example, receiving sales calls from GTE Mobilnet, GTE Long Distance, and a GTE Local Exchange Carrier would confuse more than help the customer, who would prefer a single contact by GTE for all services. This confusion is especially true if the distinctions are not relevant to the customer, e.g., interLATA vs. intraLATA calls.

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The more rules that are in place, the harder it is to adjust to changes in technology and the operating environment. Fewer, broader rules allow more flexibility to deal with customers to find innovative solutions to communications problems. Technology is changing so quickly, that rules tied to technology may soon be outdated. In the local service arena, there are already local interconnection agreements in place between incumbent Local Exchange Carriers (LECs) and new competitors. There will be arbitration decisions in several more states before the end of the year that will further define the terms for local competition. Several of the major players in local markets will be carriers that currently provide interexchange services. Therefore, the distinctions as outlined in the FCC's proposed three buckets will already be blurring by the time the rules become effective.

If the FCC does order the three buckets as proposed in the NPRM, then there should be an annual review to determine if those separate buckets should be consolidated. Considering the pace of technological change and the rapid growth of competition in local telephone markets, it is likely that the environment will have changed significantly in a year. This could work by allowing a petition after one year to the Commission. Any company that believed that the new environment warranted a change in the buckets could petition the FCC for a change.

Using CPNI to create and offer new options/products will not negatively affect a customer's privacy, because that is well within the customer's expectations about use of information within a company with which he/she has an established business relationship. There is no evidence of widespread abuses that would warrant the imposition of restrictive rules.

(2) Triggers are available for customers to opt out of allowing disclosure of CPNI.

The Commission's proposal allows use of CPNI within a specific bucket, as long as there is notification to the customer. GTE's proposal was to have a toll free call-in number or a pre-paid postcard for the customers to opt out of allowing their CPNI to be used as outlined in the notification. For start-up service, the notification would be part of the service initiation package. There would be an initial notice to all customers. Customers could contact the company at any time to restrict access to their CPNI. Once restricted, the account status would not be changed until the customer contacted us again to remove the restriction. The company would also be willing to provide an annual notification to its customers of their rights to restrict access, by the most cost effective means. Absent any contact from the customer, the company is free to use the CPNI as outlined in its notification.

(3) The Commission has the authority to approve a notice and opt out approach for approval of use of CPNI.

Within adjacent paragraphs of the Act, 222(c)(1) and (2), Congress referred to "approval" of the customer (for expanded use of CPNI) and "affirmative written request" by the customer (for release of CPNI to third parties). Using such different language in close proximity indicates that Congress did not intend to require written customer approval before allowing use of CPNI across a company with whom a customer has an established business relationship.

If a customer is notified of options to restrict access to and use of CPNI, and elects not to make those restrictions, then the customer has given tacit approval to use of that information. The minority of customers who do not wish the company to use the information have the option of making a toll-free call or sending in a pre-paid postcard, while the majority of customers are not required to take any action to maintain the existing business relationship. Customer action should not be required to maintain the status quo.

Both the Commission and the National Telecommunications and Information Administration (NTIA) have already recognized that a notice and opt out approach is acceptable in similar situations.

The NTIA issued a paper in October, 1995, entitled "Privacy: Safeguarding Telecommunications-Related Personal Information" (TRPI). Its intent was to recommend a framework for safeguarding such information. "Under NTIA's proposed framework, each provider of telecommunications and information services would inform its customer about what TRPI it intends to collect and how that data will be used. A service provider would be free to use the information collected for the stated purposes once it has obtained consent from the relevant customer. Affirmative consent would be required with respect to sensitive personal information. Tacit customer consent would be sufficient to authorize the use of all other information." (pages 8-9) The report recommends that, "Companies should not make any ancillary use of 'sensitive' TRPI without first obtaining explicit authorization from the relevant customer. On the other hand, a company should be allowed to use non-sensitive TRPI for unrelated purposes unless the customer affected, having been notified of the company's plans, takes some action stopping such use--such as making a telephone call or mailing in a form--by a certain date." (page 25) While NTIA does not suggest a definitive answer to what constitutes "sensitive TRPI", it suggests the following be considered sensitive: "information relating to health care (e.g., medical diagnoses and treatments), political persuasion, sexual matters and orientation, and personal finances (e.g., credit card numbers) should be considered 'sensitive'. The same is true for an individual's social security number." (page 25, fn. 98). Thus, CPNI should not be considered "sensitive TRPI".

The BOCs and GTE today are currently allowed to use a notice and opt out approach for multiline business customers with between two and twenty lines.

As required by the Cable Act, cable television companies send out an annual privacy notice to subscribers. The notice states how the customer's information will be used within the cable TV company and its related legal entities, including disclosure to sales representatives, mail houses, program suppliers, consumer and market research firms, and others. There is no option to opt out of this disclosure of information. The subscriber is then given an option to opt out of disclosure of this information to others (including advertisers and direct mail or telemarketers) for non-cable-related purposes, including product advertising, direct marketing, and research. Telephone numbers are provided to request non-disclosure. This is another situation where notice is given by a franchised service provider, and approval to use the information is assumed unless the customer takes action to restrict that use.

Notice and opt out also was an issue in the Billing Name and Address (BNA) Service proceedings (CC Docket 91-115). The Commission addressed the question of notification and written authorization for use of BNA. It required notification to all customers about the disclosure of BNA to Interexchange Carriers (IXCs), Enhanced Service Providers (ESPs), and independent service providers to facilitate billing for telecommunications services. In its Second Report and Order on BNA, the Commission also required a written authorization from unlisted and unpublished customers before their BNA could be released by the telephone company (para. 40). In its Second Order on Reconsideration, the Commission still required a separate notification to unlisted and unpublished customers, but concluded "that end users should not bear the burden of returning an authorization form in order to continue to use their calling cards." (para. 68) Thus, the Commission made a change from its prior order "to allow disclosure of the BNA of any unlisted and nonpublished subscriber unless that subscriber affirmatively requests that its BNA not be disclosed. We also permit LECs to presume that unlisted and nonpublished end users consent to disclosure and use of their BNA if they do not make this affirmative request." (also para. 68) Here again the Commission required notification, but allowed use of information absent an explicit request by the customer to restrict that disclosure.

There should also be no limitation on the ability of a company to provide notification across as broad a range of uses of CPNI as it wishes to request. As long as there is a full and complete disclosure to the customer of the potential uses of the information, then there is not a problem with the notice and opt out approach.

(4) Congress drafted more all encompassing CPNI rules to replace the existing rules.

The old CPNI rules were targeted only to RBOCs and GTE, and addressed CPNI as it related to enhanced services only. The Act significantly broadens the parties affected, by placing CPNI requirements on the more all encompassing category of "telecommunications carrier", recognizing that the size of a company and whether or not it is an incumbent carrier are irrelevant to a customer's privacy interests. While some commenters argued for stricter rules on incumbents (e.g., AT&T Reply Comments at page 8, footnote 17, and page 13, footnote 32, and MCI Comments at iii), the Act clearly intended a nondiscriminatory application of CPNI rules. Also, the Act did not restrict the application of CPNI rules to enhanced services, but applied the rules to telecommunications services.

The underlying theme of the Act is to foster competition, and section 222 is written to create a level playing field with regard to customer information. Contrary to AT&T's statement in footnote 32, LECs ARE subject to the same competitive marketplace forces that constrain the use of customer information by all other carriers. Having separate rules that hamstring certain players would be anti-competitive and contrary to the intent of the Act. All telecommunications carriers are now subject to the same rules. There was no need to explicitly abrogate the old rules when the new law so clearly applies broader rules. ESP information is now protected just like all other proprietary information collected by a telecommunications carrier, so there is no longer any need for separate rules targeted to a single market segment.

(5) The Commission should clarify two issues regarding release of subscriber listing information.

The order in Docket 96-115 will establish rules for the release of customer information. In determining what can be released and under what conditions, the Commission could clarify two related issues with its previous Interconnection Orders in Docket 96-98.

First, there appears to be some confusion in the use of the terms unlisted and unpublished. In GTE's terminology, and what is filed in our tariffs, "unlisted" means that the number is not in the published directory, but is available from directory assistance (DA). "Unpublished" means that the number is not in the published directory, nor is it available on DA.

The First Interconnection Order in paragraph 535 mentions both unlisted and unpublished numbers, and says incumbent LECs are not required to provide access to such. The Second Interconnection Order states, "we require that in permitting access to directory assistance, LECs bear the burden of ensuring that access is permitted only to the same information that is available to their own directory assistance customers, and that the inadvertent release of unlisted names or numbers does not occur." (para. 135) However, unlisted numbers are generally made available on DA. Therefore, these two Orders seem to be contradictory. Because Section 222 and Docket 96-115 also deal with subscriber listing information, including limiting access to unpublished and unlisted numbers, the FCC could reasonably clarify that callers to DA should have access to unlisted numbers, but not unpublished numbers.

The second issue revolves around the use of subscriber list information for multiple purposes. Section 222 requires the sale of subscriber listing information, but only for the purpose of publishing a directory. Previous FCC Orders in the BNA Docket 91-115 prohibited the use of billing name and address information for marketing purposes. In the Second Report and Order, the Commission referred to its taking action in the BNA order to ensure that customer privacy is protected.

In the Interconnection Orders, the FCC said that directory assistance provided by incumbent LECs and the databases supporting it are unbundled network elements. In addition, all LECs are required to share subscriber listings in readily accessible formats.

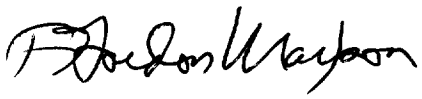
Also in the Interconnection Orders, the FCC "bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements." (para. 292) This appears to require the incumbent LEC to sell the DA subscriber listing database without any restrictions on its use or resale for other purposes. This would result in the release of both published and unlisted customer telephone numbers for multiple purposes, such as marketing lists. So the privacy protections in section 222 would appear to be circumvented by the requirements in the First and Second Interconnection Orders to sell DA listings to competing providers, with no use or resale restrictions.

In its Order in 96-115, the FCC will likely be addressing the issue of use of subscriber listings for purposes other than publishing a directory (because the issue of using this information for marketing purposes was raised in the Comments). When responding to this issue, the FCC should clarify that the DA listings required to be sold under the Interconnection Orders may only be used for the purpose of providing DA or related services (e.g., reverse search - customer name and address), to be consistent with its interest in protecting customer privacy.

We recognize that it would be difficult to police the misuse of the listings, because once they are published anywhere, they are available for anything a company chooses to do with them. Also, there are list broker companies that obtain lists from non-telephone company sources for sale to anyone for any purpose. However, we still believe it is important to be able to place a use/resale restriction on lists sold for directory publication and for directory assistance purposes, as the Commission has previously done for services such as BNA.

We appreciate the opportunity to present our views to the Commission. Please call me if we need to discuss these issues further.

Sincerely,



F. Gordon Maxson
Director - Regulatory Affairs